

Opinion
No. 1210

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

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AUG 19 1982

FILED

CHARLES R. TANGUY, et al.)	
)	
Petitioners,)	
)	
v.)	Docket No. 3082
)	
DISTRICT OF COLUMBIA,)	
)	
Respondent.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In this action, petitioners appeal from a denial of a claim for refund of income taxes. The cause was heard by this Court on July 15, 1982. Based on the pleadings, testimony and exhibits, and after considering the arguments of counsel, the Court makes the following Findings of Fact and Conclusions of Law.

Findings of Fact

(1) The petitioners are husband and wife and during part of 1975 and all of 1976 resided in the District of Columbia in a rented house at 3515 Fulton Street, N.W.

(2) The taxes in controversy are income taxes for the final four months of 1975 and for 1976. The amount of the tax for the final four months of 1975 is \$596.24; the amount of the tax for 1976 is \$3,260.04.

(3) The tax for both years was paid by petitioners on December 31, 1980. Claims for Refund were made on December 30, 1980 and were denied on April 24, 1981.

(4) All of the income on which the tax at issue was paid was income of Mr. Tanguy and not of Mrs. Tanguy. During the years at issue, Mr. Tanguy was a career officer in the United States Foreign Service, and as such was an officer appointed by the President, subject to confirmation by the Senate, who served at the pleasure of the President.

(5) From the time Mr. Tanguy was eleven until he entered the Foreign Service in 1947, he lived with his parents in Baltimore, Maryland. From 1947 until 1956, Mr. Tanguy was ordered by the Foreign Service to reside in duty stations in several foreign countries. In 1956, Mr. Tanguy was assigned a tour of duty in the District of Columbia, and petitioners returned to the United States to live in Maryland. In 1961, Mr. Tanguy was assigned to the American Embassy in Ankara, Turkey, where petitioners lived until 1968.

(6) Because Mr. Tanguy's position with the State Department required frequent transfers that prevented petitioners from developing strong attachments to any of their duty stations, petitioners continued to regard Mr. Tanguy's parents' house as their home throughout his career as a Foreign Service Officer, and they returned there when Mr. Tanguy's duties with the State Department allowed. In 1955, Mr. Tanguy's parents moved from Baltimore to Sarasota, Florida. In the years 1956, 1957, 1958, 1959 and 1960, petitioners took their annual leave in Florida, often spending a month or more at a time there.

(7) In 1963, after petitioners had spent their home leave in Florida, Mr. Tanguy formally declared Florida his domicile by filing a Declaration of Domicile and Citizenship with the State. In 1965, petitioners again spent their home leave in Florida.

(8) In 1968, Mr. Tanguy was assigned by the Department of State to a tour of duty in the District of Columbia and, for the first time, petitioners took up residence in the District. In 1968 and 1970, petitioners spent their annual leave in Florida.

(9) In 1972, Mr. Tanguy was assigned to The Netherlands, where petitioners lived until September 1975, when Mr. Tanguy was again reassigned to the District of Columbia. In 1975 and 1976, petitioners spent their annual leave in Florida. He was last in the State of Florida for a visit in 1980.

(10) All of Mr. Tanguy's assignments to duty stations by the Foreign Service were of limited duration; petitioners always knew that after several years in each duty station, they would be reassigned to a new location.

(11) Petitioners have the following significant contacts with the State of Florida:

(a) Florida is where Mr. Tanguy's parents resided until their deaths, and where his half-brother, his sister-in-law and her husband, and his brother-in-law reside;

(b) Mr. Tanguy has listed Florida as his home in his Last Will and Testament, which he executed in 1968;

(c) Some of Mr. Tanguy's personal effects, including furniture that he will use when he is next able to reside in Florida, are kept in Florida;

(d) For every year since 1963, petitioners, when required to do so, have filed a return as required of domiciliaries under Florida's Individual and Fiduciary Intangible Personal Property Tax Act;

(e) Mr. Tanguy voted in the 1968 and 1976 Presidential elections in the State of Florida;

(f) In 1956, Mr. Tanguy listed his address for home leave purposes as 1324 S. Lake Shore Drive, Sarasota, Florida;

(12) While Mr. Tanguy was employed by the Department of State, petitioners never intended to remain indefinitely in the District, and Mr. Tanguy's two tours of duty in the District were of limited duration.

(13) Petitioners did not reside in the District by choice. In each of Mr. Tanguy's two tours of duty here, they were directed to come to the District by the Foreign Service.

(14) During his last tour of duty in the District of Columbia, Mr. Tanguy joined the St. John's Episcopal Church and was elected to the Vestry in 1977.

(15) Petitioners bought a home in the District of Columbia in May of 1978.

(16) Petitioner, Charles R. Tanguy, maintained a checking account in the National Bank of Washington since residing in the District of Columbia.

Conclusions of Law

Petitioners challenge the District of Columbia assessments of income tax for the final four months of 1975 and for the entire year of 1976.

The record is clear and there is no dispute that for the final four months of 1975 the District of Columbia levied an income tax against petitioners in the sum of \$596.24 and for the year 1976 the amount of \$3,268.84.

The statute is clear in this case that a person who resides here in the District of Columbia with intention to remain here indefinitely and who has no other intention to leave the District of Columbia and to live elsewhere is a resident and a domiciliary of the District of Columbia and is subject to the District of Columbia income tax law. District of Columbia v. Murphy, 314 U.S. 441-5 (1941).

There is exception to this requirement for persons who are appointed by the President of the United States, confirmed by the Senate, whose tenure of office is at the pleasure of the President of the United States. They are exempted from the District of Columbia income tax if they have the intention of returning to their previous residence or domicile and are thus not domiciled in the District of Columbia on the last day of the taxable year. 47 D.C. Code § 1551c(s) (1973 ed.).

The testimony is clear in this case that the petitioner has been on various assignments for the United States Government from the time he was appointed to the Foreign Service in 1947 up through the date of his retirement in August of 1980.

The Court finds in this case that the petitioner was assigned to the District of Columbia from 1968 through 1972, and from 1975 throughout the year of 1976. During this last tour of duty in the District of Columbia, the record shows that the taxpayer joined the St. John's Episcopal Church in 1975. He was elected to the Vestry in 1977. The record also shows that petitioner bought a home in the District of Columbia in May 1978, that he has maintained a checking account in the National Bank of Washington since residing in the District of Columbia.

The record is clear that the District of Columbia has deemed him to be domiciled in the District of Columbia, which is the reason given for their imposing a tax, an income tax upon the taxpayer.

Petitioner challenges the allegations of the District of Columbia by saying that while petitioner resided in the District of Columbia from September of 1975 through December 31, 1976, that he maintained a voting residence in the State of Florida and that he did so since 1963.

Testimony further shows that the petitioner voted in the 1968 and 1976 Presidential elections in the State of Florida. The record also shows that in 1968 petitioner executed a Last Will and Testament in which he listed his home as in the State of Florida.

The record shows that petitioner returned to the State of Florida in 1975 and 1976. He was last in the State of Florida for a visit in 1980.

The Court is only called upon to determine the appeal in this case for the four months of 1975 and the taxable year of 1976, whether or not the taxpayer-petitioner in this case was in fact domiciled in the District of Columbia.

Based on the testimony and the evidence in this case, this Court concludes from the testimony that for the final four months of 1975 and for the taxable year of 1976, that the petitioner has established that he was not domiciled in the District of Columbia on the last day of either taxable year and concludes as a matter of law that he was not subject to the income tax laws for that period. District of Columbia v. Murphy, 314 U.S. 441, 455 (1941).

IT BE AND IS HEREBY ORDERED that Respondent, District of Columbia, refund the taxes paid by Petitioners for the final four months of 1975 in the amount of \$596.24 and the income taxes paid by Petitioners for 1976 in the amount of \$3,264.84, together with interest as provided by law at 4 percent from December 31, 1980;

FURTHER ORDERED that the Clerk of the Court enter a judgment in accordance with these Findings of Fact and Conclusions of Law.


Funtleroy, J.

August
July 17, 1982